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12 *Specially Appearing on Behalf of Amici Curiae,*  
13 *George Gascón, San Francisco District Attorney and*  
14 *Jackie Lacey, Los Angeles District Attorney,*

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 MATTHEW PHILLIBEN, *et al.*, individually  
and on behalf of all others similarly situated,

18 Plaintiffs,

19 vs.

20 UBER TECHNOLOGIES, INC., *et al.*,

21 Defendants.

Case No. 3:14-cv-05615-JST

**ADMINISTRATIVE MOTION OF THE  
DISTRICT ATTORNEYS FOR THE  
CITY AND COUNTY OF SAN  
FRANCISCO AND THE COUNTY OF  
LOS ANGELES FOR LEAVE TO FILE  
AN AMICUS BRIEF IN OPPOSITION  
TO PLAINTIFFS' ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL**

**(CIVIL LOCAL RULE 7-11)**

[Re: ECF Nos. 75, 80]

## INTRODUCTION

The District Attorneys for the City and County of San Francisco and the County of Los Angeles make this special appearance to respectfully move, pursuant to Civil Local Rule 7-11, for leave to file an amicus brief in opposition to Plaintiffs’ administrative motion to file under seal in this action. (*See* Administrative Motion to File under Seal, ECF No. 75.<sup>1</sup>) In this consolidated class action against Uber—which is based on allegations and legal theories that are largely copied from the District Attorneys’ original complaint in the earlier-filed civil law enforcement action entitled *People v. Uber Technologies, Inc., et al.* (Super. Ct. S.F. County, No. CGC-14-543120)—Plaintiffs and Uber ask the Court to approve a settlement that includes injunctive relief and restitution on behalf of a nationwide class, California citizens among them. Plaintiffs and Uber, however, seek to seal important information bearing upon the fairness, adequacy, and reasonableness of the amount of restitution to which they have agreed. In light of the potential ramifications to the law enforcement action and the Ninth Circuit’s decision in *California v. IntelliGender, LLC*, 771 F.3d 1169 (9th Cir. 2014), the District Attorneys need to see this important information to determine whether the proposed settlement adequately protects and compensates California citizens. The District Attorneys therefore oppose the sealing of this information.<sup>2</sup>

## ARGUMENT

### I. STANDARD FOR A MOTION FOR LEAVE TO FILE AN AMICUS BRIEF

District courts have discretion to permit third parties to participate in an action as amici curiae. *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 U.S. Dist. LEXIS 4467, at \*7-8 (N.D. Cal. Jan. 9, 2007). Such discretion is generally exercised liberally, as there are no strict prerequisites that must be established to qualify for amicus status. *Id.* District courts frequently accept amicus briefs from non-parties “concerning legal issues that have potential ramifications beyond the parties directly involved.” *Sonoma Falls Devs., LLC v. Nev. Gold &*

<sup>1</sup> Record citations are to the electronic case file (“ECF”); pin cites are to the ECF-generated numbers at the tops of documents.

<sup>2</sup> The parties could not reach a stipulation regarding the filing of an amicus brief by the District Attorneys. Along with this motion, the District Attorneys have filed the Declaration of Evan Ackiron, a proposed order, and a copy of the proposed amicus brief.

1 *Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003); *see Ryan v. Commodity Futures Trading*  
 2 *Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (“An amicus brief should normally be allowed when  
 3 a party is not represented competently or is not represented at all, when the amicus has an interest  
 4 in some other case that may be affected by the decision in the present case (though not enough  
 5 affected to entitle the amicus to intervene and become a party in the present case), or when the  
 6 amicus has unique information or perspective that can help the court beyond the help that the  
 7 lawyers for the parties are able to provide.”).

## 8 **II. THE DISTRICT ATTORNEYS’ INTEREST**

9 On December 9, 2014, the District Attorneys commenced *People v. Uber Technologies,*  
 10 *Inc., et al.* (Super. Ct. S.F. County, No. CGC-14-543120) in San Francisco Superior Court as a  
 11 civil law enforcement action on behalf of the People of the State of California against Uber. The  
 12 People are suing Uber over five unlawful business practices, two of which are Uber’s practice of  
 13 misrepresenting the nature and character of the background checks and measures it takes to ensure  
 14 customer safety, and Uber’s misrepresentations regarding its “Safe Rides Fee.” The People seek  
 15 restitution, civil penalties, and injunctive relief. The law enforcement action is ongoing.

16 On December 23, 2014, two weeks after the People filed the law enforcement action, two  
 17 of the Plaintiffs in this now-consolidated action filed a putative class action complaint in this Court  
 18 that also brings claims against Uber arising out of Uber’s untrue or misleading representations  
 19 regarding rider safety and its fraudulent and misleading “Safe Rides Fee.” *See Philliben, et al. v.*  
 20 *Uber Technologies, Inc., et al.*, No. 3:14-cv-05615-JST (N.D. Cal.). The original *Philliben*  
 21 complaint alleged the same safety misrepresentations by Uber that are alleged in the law  
 22 enforcement action and the same theories about why those safety misrepresentations and the Safe  
 23 Rides Fee are misleading. On January 6, 2015, the other four Plaintiffs filed a putative class action  
 24 complaint in this Court that brings claims against Uber for the same conduct. *See Mena, et al. v.*  
 25 *Uber Technologies, Inc., et al.*, No. 3:15-cv-00064-JST (N.D. Cal.).

26 The *Philliben* and *Mena* class actions were consolidated, and now Uber and all six  
 27 Plaintiffs have agreed to settle their disputes. (*See Consolidated Complaint*, ECF No. 67;

1 Stipulation of Settlement, ECF No. 74.) On February 11, 2016, Plaintiffs filed an administrative  
 2 motion for leave to file under seal portions of (1) their motion for preliminary approval of the  
 3 proposed class action settlement, and (2) the Declaration of Robert Adhoot, which Plaintiffs filed  
 4 in support of the motion for preliminary approval. (*See* Administrative Motion to File under Seal,  
 5 ECF No. 75; Redacted Motion for Preliminary Approval, ECF No. 75-3; Redacted Adhoot Decl.,  
 6 ECF No. 75-5.) According to the unredacted portions of those documents, Uber will pay  
 7 \$28,500,000 to approximately 25,000,000 U.S. riders.<sup>3</sup> (Redacted Motion for Preliminary  
 8 Approval, ECF No. 75-3 at 15; Redacted Adhoot Decl., ECF No. 75-5, ¶ 68.) After settlement  
 9 administrator fees, transaction costs, service awards, and attorneys' fees and costs are taken out,  
 10 Plaintiffs estimate that each U.S. rider will receive approximately 82 cents in restitution. (Redacted  
 11 Motion for Preliminary Approval, ECF No. 75-3 at 15-17; Redacted Adhoot Decl., ECF No. 75-5,  
 12 ¶¶ 67-68.)

13 Other important information regarding the restitution, which is critical to an evaluation of  
 14 the proposed settlement, is redacted. Plaintiffs seek to file it under seal because Uber designated it  
 15 as confidential pursuant to the parties' protective orders. (Administrative Motion to File under  
 16 Seal, ECF No. 75.) Uber says this information (the "Redacted Information") is sealable as trade  
 17 secrets. (Uber's Statement, ECF No. 80 at 2, 4-5.)

18 Because the People's law enforcement action could be affected by the proposed settlement,  
 19 the District Attorneys ask the Court to allow them to file an amicus brief in opposition to  
 20 Plaintiffs' administrative motion to file under seal. Through this brief, the District Attorneys wish  
 21 to provide the Court with "considerations germane to [its] decision of [the Plaintiffs'  
 22 administrative motion to file under seal] that the parties for one reason or another have not brought  
 23 to [the Court's] attention." *Ryan*, 125 F.3d at 1064.

24 The amicus brief addresses two topics: (1) Uber's prior disclosure of the kind of

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26 <sup>3</sup> The class that Plaintiffs seek to certify includes "[a]ll persons who, from January 1, 2013 to January 31, 2016, used  
 27 the Uber smartphone application ('App') or website to obtain service from one of Uber's Rideshare Services in the  
 United States or its territories and who have a U.S. Payroll Profile." (Redacted Motion for Preliminary Approval, ECF  
 No. 75-3 at 15.)

information it seeks to seal in this action; and (2) the District Attorney's special need to see the unredacted settlement documents. On the first topic, the District Attorneys argue that the Redacted Information is not confidential because Uber recently disclosed detailed rider, ride, and revenue data in *Tadepalli v. Uber Technologies, Inc.*, No. 3:15-cv-04348-MEJ (N.D. Cal.). On the second topic, the District Attorneys explain that, because of the redactions, it is not possible for them to determine whether the proposed settlement is fair, adequate, and reasonable, *see* Fed. R. Civ. P. 23(e)(2), and whether (or to what degree) it protects and compensates California citizens. The District Attorneys must be able to do this in light of the Ninth Circuit's decision in *California v. IntelliGender, LLC*, wherein the Court held that principles of res judicata barred a City Attorney from seeking restitution on behalf of California citizens in a law enforcement action filed after the district court approved a private class-action settlement that included restitution for the class members. 771 F.3d 1169, 1179-82 (9th Cir. 2014). To make these determinations, the District Attorneys need access to the unredacted settlement documents.

### CONCLUSION

Plaintiffs and Uber's proposed settlement in this action could affect the People's law enforcement action. Accordingly, the District Attorneys respectfully ask the Court to grant their administrative motion for leave to file the accompanying amicus brief.

DATED: February 24, 2016

GEORGE GASCÓN

District Attorney, City and County of San Francisco

BY: /s/ Daniel C. Amador

Daniel C. Amador

Assistant District Attorney

JACKIE LACEY

District Attorney, Los Angeles County

BY: /s/ Hoon Chun

Hoon Chun

Assistant Head Deputy District Attorney

**ECF ATTESTATION**

I, Ernst A. Halperin, am the ECF user whose ECF ID and password are bring used to file the ADMINISTRATIVE MOTION OF THE DISTRICT ATTORNEYS FOR THE CITY AND COUNTY OF SAN FRANCISCO AND THE COUNTY OF LOS ANGELES FOR LEAVE TO FILE AN AMICUS BRIEF IN OPPOSITION TO PLAINTIFFS' ADMINISTRATIVE MOTION TO FILE UNDER SEAL. I hereby attest that I received authorization to insert the signatures indicated by a conformed signature (/s/) within this e-filed document.

DATED: February 24, 2016

BY: /s/ Ernst A. Halperin  
Ernst A. Halperin  
Assistant District Attorney